

Message Text

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CINCPACREP GUAM: PASS TO SLNO

E.O. 11652: GDS-84

TAGS: PINT, TQ

SUBJECT: PENDING COM AND NITIJELA LEGISLATION

REF: A) SLNO 061

1. OMSN AND OTA HAVE FURTHER DISCUSSED HB 7-444
SINCE OTA-AMB-HICOM-TELCON OF LAST WEEK. WE UNDER-
STAND SUBJECT BILL AS PASSED WOULD CREATE CONSTITUTION
REFERENDUM BOARD (CRB) OF SIX PERSONS OF WHOM TWO
WOULD BE HICOM APPOINTEES. ALSO NOTE COMMENTS IN
BERG-BENNET TELCON 03 MAR THAT HICOM BELIEVES IT
IS UNLIKELY HE WILL FIND CREDIBLE MARSHALLESE AND
PALAUAN REPRESENTATION FOR CRB. REF A. POINTS OUT
ADDITIONAL PROBLEMS WITH THE NEW ELECTORAL MECHANICS
INCLUDED IN SECTIONS 4, 7, AND 8 OF BILL.

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2. ASSUMING BILL HAS NOT BEEN CHANGED SINCE ITS
INTRODUCTION, BILL GIVES US SEVERE PROBLEMS. OUR
COMMENTS ARE AS FOLLOWS:

----A. SECTION 4 ALLOWS CRB TO PROMULGATE RULES
AND REGULATIONS RELATIVE TO THE CONDUCT OF THE REFERENDUM

IN A FASHION EXEMPTED FROM THE REQUIREMENTS OF TITLE 17 TTC.

TITLE 17 REQUIRES PUBLICATION OF INTENDED REGULATIONS AND OTHER RULE-MAKING PROCEDURES. WE DO NOT UNDERSTAND NEED FOR THIS EXEMPTION AND BELIEVE THERE COULD BE UNDESIRABLE CONSEQUENCES INCLUDING CLAIMS OF LACK OF COORDINATION WITH ALL INTERESTED PARTIES.

----B. SECTIONS 5 AND 8 ARE EXTREMELY VAGUE IN THAT, BY CONTRAST WITH 43 TTC CHAPTER 11, THEY FAIL TO ESTABLISH ANY STANDARDS FOR THE NATURE OF THE REPRESENTATIONS TO BE MADE IN AFFIDAVITS ON APPLICATIONS TO REGISTER OR VOTE. SINCE THE PROCEDURAL SAFEGUARDS OF TTC TITLE 17 ARE NOT TO APPLY WE HAVE NO IDEA WHAT SORT OF IMPLEMENTING REGULATIONS ARE TO EMERGE FROM THIS PROCESS. THERE WILL PRESUMABLY BE NO RECOURSE FOR THOSE AGGRIEVED BY THE RULE-MAKING PROCESS.

----C. THE COMMENTS OF THE PRECEDING PARAGRAPH ARE APPLICABLE, ALSO, TO SECTION 6.

----D. WE ARE DEEPLY CONCERNED BY THE APPARENTLY DELIBERATE AMBIGUITY OF SECTION 7. "IF HE IS PRESENT WITHIN HIS ADMINISTRATIVE DISTRICT ON THE DAY OF THE REFERENDUM" IS NOT THE SAME AS "SO LONG AS HE VOTES WITHIN THE ADMINISTRATIVE DISTRICT IN WHICH HE IS LEGALLY REGISTERED,"
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OR WORDS TO THAT EFFECT. SECTION 7, TAKEN TOGETHER WITH THE BILL'S OTHER PROVISIONS, APPEARS TO GIVE ANY VOTER, REGISTERED OR NOT, THE RIGHT TO VOTE ANYWHERE IN THE TRUST TERRITORY SO LONG AS HE BEGINS OR ENDS ELECTION DAY IN SOME PART OF "HIS ADMINISTRATIVE DISTRICT." IF THIS IS THE INTENDED RESULT, IT COULD GIVE RISE TO ATTEMPTS TO MOVE NUMBERS OF PERSONS OF KNOWN VIEWS ON THE CFSM FROM ONE DISTRICT TO ANOTHER ON ELECTION DAY IN ORDER TO INFLUENCE THE OUTCOME IN A PARTICULAR DISTRICT. SUCH ACTIVITY WOULD BE OPEN TO JUSTIFIED CRITICISM THAT ELECTORAL LAWS WERE SPECIFICALLY DESIGNED TO PERMIT SUCH MANIPULATION.

----E. SECTION 12 CAN BE READ AS A CARTE BLANCHE FOR CRB ACTIONS.

----F. WE PERCEIVE NO OBJECTION TO SECTION 13 BUT FAIL TO UNDERSTAND ITS SIGNIFICANCE.

3. IF BILL IS APPROVED AND HICOM IS UNABLE TO SECURE APPROPRIATE LEVEL OF PALAUAN AND MARSHALLESE REPRESENTATION, SERIOUS POLITICAL PROBLEMS COULD RESULT. HICOM

AND HIS REPRESENTATIVES COULD BE OUTVOTED ON CRB AND

RULES AND REGULATIONS MADE PURSUANT TO SECTION 4 COULD BE CAPRICIOUS OR POSSIBLY EVEN DESIGNED TO ACHIEVE A SPECIFIC POLITICAL RESULT. A SIMILAR PROBLEM COULD ARISE IN CRB'S EXERCISE OF ITS AUTHORITY TO MAKE APPOINTMENTS TO THE OFFICES CREATED BY SECTION 3 OF THE BILL. ALTERNATIVELY, A STALEMATE RESULTING FROM EVEN SPLIT ON CRB COULD PLACE HICOM UNDER INTENSE POLITICAL PRESSURE.

4. IN LIGHT OF THE PLANNED UNTC OBSERVATION OF THIS REFERENDUM AND OF ITS IMPORTANCE AS THE DETERMINATIVE FACTOR ON THE QUESTION OF POLITICAL UNITY, WE BELIEVE
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THAT THE RULES AND PROCEDURES OF THE ELECTORAL PROCESS SHOULD BE WELL-DESIGNED, EASILY UNDERSTOOD ENTIRELY IMPARTIAL IN THEIR APPLICATION AND, PREFERABLY, TIME-TESTED. PRESENT TRUST TERRITORY LAW, SPECIFICALLY THE PORTIONS OF TITLE 43 TTC WHICH ARE TO BE SUPERCEDED BY THIS BILL, MEETS THESE CRITERIA.

5. WE HAVE THEREFORE CONSIDERED THE ADVISABILITY OF SUGGESTING DISAPPROVAL OF HB 7-444 LINKED WITH FOLLOW-ON HICOM EXECUTIVE ACTION ESTABLISHING A BOARD SIMILAR TO CRB WHICH WOULD FUNCTION IN MUCH THE SAME MANNER AS SET OUT IN BILL, BUT ELIMINATING OBJECTIONABLE FEATURES OF THE BILL. SUCH A SOLUTION HAS THE ADVANTAGE OF MEETING COM DESIRE FOR A CRB WITHOUT ELIMINATING LEGAL AND PROCEDURAL SAFEGUARDS VITAL TO THE INTEGRITY OF THE ELECTION. WE ARE UNSURE HOWEVER OF ACCEPTABILITY OF THIS PROPOSAL TO COM OR OF EXTENT OF HICOM'S EXECUTIVE AUTHORITY TO IMPLEMENT SAME. WE ARE NOT NECESSARILY SUGGESTING DISAPPROVAL OF BILL SINCE HICOM IS IN MUCH BETTER POSITION THAN WE TO ASSESS EFFECT OF DISAPPROVAL AND POSSIBLE EFFECT OF SOME OF THE AMBIGUOUS LANGUAGE OF BILL. WE ARE AWARE THAT DISAPPROVAL COULD SOUR RELATIONS WITH COM, GIVE RISE TO A CLAIM OF INTERFERENCE IN CFSM REFERENDUM AND ELIMINATE CHANCES FOR COOPERATIVE REFERENDUM MANAGEMENT. WE WOULD NONE-THE-LESS CERTAINLY UNDERSTAND AND SUPPORT A HICOM DECISION TO DISAPPROVE BILL.

6. PLS BRING THIS INFORMATION TO ATTENTION OF HICOM AND KEEP US INFORMED OF ACTIONS ON YOUR END. WE HAVE SHARED THIS CABLE WITH OTA WHICH DEFERS TO HICOM VIEWS BUT IS IN AGREEMENT WITH POINTS MADE IN PARAS 2, 3, 4, AND 5. AMBASSADOR ROSENBLATT SENDS.
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